

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

MARSHALL JOINT SCHOOL
DISTRICT NO. 2,

Plaintiff,

v.

ORDER

08-cv-187-bbc

C.D., by and through his parents,
Brian and Traci D.,

Defendant.

TRACI AND BRIAN D.,
as parents of and on behalf of
their minor child C.D.,

08-cv-189-bbc

Plaintiffs,

v.

MARSHALL JOINT SCHOOL
DISTRICT NO. 2,

Defendant.

On January 8, 2009, this court entered an order in case no. 08-cv-187-bbc, dkt. #47,
dismissing plaintiff Marshall School District's appeal of a state administrative law judge's

decision brought pursuant to the Individuals with Disabilities Education Act and Wisconsin state special education law. In a related case, case no. 08-cv-189-bbc, Brian D. and Traci D. filed an action against Marshall School District for attorney fees and costs as the prevailing party in the administrative hearing. I stayed proceedings in that case, dkt. #12, pending resolution of the school district's appeal of the administrative decision. Now Traci and Brian D. have moved to consolidate the two cases and petitioned for costs and attorney fees in case no. 08-cv-189-bbc. Meanwhile, the school district has filed a notice of appeal in case no. 08-cv-187-bbc and moved to stay proceedings on the motion to consolidate and petition for attorney fees and costs.

Although the two cases share common questions of fact, I am denying the motion to consolidate them because it is unnecessary at this point. In case no. 08-cv-187-bbc, this court issued a final order with respect to the administrative decision, which the school district is now appealing. Although related, case no. 08-cv-189-bbc involves Traci and Brian D.'s petition for attorney fees and costs, a separate issue that is not yet final or appealable. Therefore, consolidating the two cases would not further the goals of Fed. R. Civ. P. 42(a) to promote judicial economy or simultaneous resolution of the related claims. Ikerd v. Lapworth, 435 F.2d 197, 204 (7th Cir. 1970).

For similar reasons, I am denying the school district's motion to stay proceedings on the petition for attorney fees and costs: the two cases are separate. Even in the same case,

“decisions on the merits and decisions about attorneys’ fees are treated as separate final decisions, which must be covered by separate notices of appeal—each filed after the subject has independently become ‘final.’” McCarter v. Retirement Plan for District Managers of American Family Insurance, 540 F.3d 649, 652 (7th Cir. 2008). In this case, there is no reason to delay resolution of the petition for attorneys fees and costs in case no. 08-cv-189-bbc.

The school district has not filed a response to the fee petition, presumably waiting to see whether this court would stay that action. The school district may have until February 17, 2009 in which to respond to the petition. The parties should file all documents related to the petition in case no. 08-cv-189-bbc and not in case no. 08-cv-187-bbc, which is now closed.

ORDER

IT IS ORDERED that:

1. Defendant C.D.’s motion to consolidate case nos. 08-cv-187-bbc and 08-cv-189-bbc, dkt. #49, is DENIED as unnecessary.
2. Plaintiff Marshall School District’s motion to stay proceedings on the motion to consolidate and petition for attorneys fees and costs, dkt. #58, is DENIED.

3. Defendant Marshall School District may have until February 17, 2009 in which to file a response to the fee petition in case no. 08-cv-189-bbc.

Entered this 11th day of February, 2009.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge